IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC. APPLICATION NO. 6572 OF 2000

with

CRIMINAL MISC. APPLICATIONS NOS. 6831 & 6832 OF 2001

in

CRIMINAL MISC. APPLICATION NO. 6572 OF 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE B.C.PATEL

and

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? :
YES- To all D.Js. with instructions to circulate to all subordinate judges.

R.P. VAGHELA
Versus
STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6572 of 2000
MR SB VAKIL, SR. COUNSEL as amicus curiae
MR SN SHELAT, ADVOCATE GENERAL with
MR KB TRIVEDI, ADDL. ADVOCATE GENERAL with
MR AD OZA, PUBLIC PROSECUTOR for STATE
MR PM THAKKAR, SR. COUNSEL with
MR HS TOLIA for respondent no.3
MR RJ OZA, for respondent no.4

2. Criminal Misc.Application Nos. 6831 & 6832 of 2001
MR. ANMOL SHARMA for applicant
MR. GIRISH PATEL, SR. COUNSEL for applicants

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE B.C.PATEL
and
MR.JUSTICE J.N.BHATT
and
MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE Y.B.BHATT

Date of decision:01/02/2002

C.A.V. JUDGEMENT
(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. In these contempt proceedings initiated by the subordinate court, this Bench of five senior most Judges of this Court has been constituted because of the importance of the legal question referred to it by a Division Bench of this Court by order passed in Criminal Miscellaneous Application No. 6752 of 2000 on 11-12-2000. The main question that requires decision is whether High Court can take congnizance of contempt proceedings in this case or it is only the Supreme Court

on its judicial side which can deal with the case. The other related question is whether in fact any contempt has been committed and whether the proceedings initiated are within limitation under Section 20 of the Contempt of Courts Act, 1971 and if contempt has been committed and the proceedings are within limitation, what is the gravity of the contempt and what punishment deserves to be imposed.

#. On the basis of the affidavit filed by the alleged contemners the facts no longer in dispute are as under:

#. On 11-02-2000 the Joint District and Addl. Sessions Judge, Bhavnagar addressed a letter directly to the Registrar of the Supreme Court of India and sent it to the Registrar of this High Court for communicating the same to the Supreme Court of India to take congnizance of the contempt which is alleged to have been committed of the Supreme Court in the course of criminal proceedings in his court.

#. The facts reported in the said communication are that in Sessions Case No. 220 of 1998 in his Court, accused named Bharatkumar Amrutlal Maniyar was jointly tried for offence under Section 302 IPC with other co-accused was produced on 24-01-2000. According to the report of the Joint District and Sessions Judge, inside the court room as he saw the Constable carrying a handcuff in his hand, he questioned the accused person and the Constable Samantbhai Lakhabhai Chudasama, Buckle No. 10. After questioning them, the trial Judge prepared a report and obtained signatures of the accused, his advocate, the Constable concerned and the Public Prosecutor. The Constable (Samantbhai Lakhabhai Chudasama is before us as contemner) admitted that he had brought the under trial accused person handcuffed from jail to the court. On this incident in the opinion of the learned Trial Judge, the directions of the Supreme Court made from time to time in several decisions have been deliberately breached as before bringing the under trial accused in handcuff, no permission was taken either from the Magistrate or from the trial Judge. The learned trial Judge was more concerned with the repeated and regular breaches of the directions of the Supreme Court in the matter of handcuffing the under trial prisoners. In his report he states:

> "I have noticed that accused persons are handcuffed while being brought to the various Courts in Bhavnagar. Even though I had drawn the attention of the District Superintendent of

Police by writing a letter to him in this regard, the practice of handcuffing the under trial accused persons without authorisation from the concerned Magistrate or Court continues.

I have noticed that the practice of handcuffing under trial accused persons without authorisation from the Magistrate or Courts continues throughout the State of Gujarat despite specific directions of Hon'ble the Supreme Court. I have myself seen accused persons in handcuffed condition at the City Sessions Court in Ahmedabad and learnt that this happens daily. In all probability there will not be a single case where the Police authorities approached any Magistrate or Judge for permission to handcuff an accused. The Constables ought not be blamed since they adopt this practice under instructions from their superior officers. It would, therefore, be necessary to take appropriate action against the higher officers in the Police and concerned Departments of the Government of Gujarat.

Accordingly, I request that this letter and the enclosed report may kindly be put up before the concerned Bench of Hon'ble the Supreme Court for taking appropriate action in this regard. I may suggest that notices may be served in this regard to the following parties:

1. State of Gujarat,
 Notice to be served to the
 Secretary,
 Home Department,
 Sachivalaya,
 GANDHINAGAR,
 Gujarat.
2. Director General of Police
 Gujarat State,
 AHMEDABAD,
 Gujarat.
3. District Superintendent of Police
 BHAVNAGAR,
 Gujarat.

In my humble opinion, the practice of handcuffing the under trial accused persons in the State of Gujarat amounts to contempt of Hon'ble the Supreme Court. I, therefore, request that appropriate action be taken in this regard.

Thanking you.

Yours sincerely,
Sd/-
(R.P.Vaghela),
Joint District Judge &

Addl. Sessions Judge"

#. From the record of the proceedings before us it does not appear that the Registrar of the Supreme Court placed the matter on the judicial side of the Supreme Court. The papers of the case were sent to the Registrar of this High Court by the Registrar General of the Supreme court with report as under which are contents of his letter dated 26-04-2000:-

"Sir,

Please refer to your letter No. 2605/92 dated Nil forwarding therewith the letter dated 11th February, 2000 of Shri Ramesh P. Vaghela, Joint District Judge and Additional Sessions Judge, Bhavnagar.

The above matter was placed before the Hon'ble competent authority. I have been directed to inform you that in this respect the High Court being competent to take the action in this matter in view of the general directions of this Court in Judgment dated 1st May, 1995 passed in Writ Petition (Civil) No. 22 of 1995 entitled "Citizens for Democracy through its President Versus The State of Assam & ors." and there was no need to forward the same to this Court.

In view of the above, your letter along with annexures is, therefore, returned herewith for appropriate action at your end.

Please acknowledge receipt.

Yours faithfully,

Sd/-

26-04-2000

(L.C. BHADOO)

Encl: As above"

#. It is left to be guessed by this Court whether the Registrar General had placed the papers before the Chief Justice of India when he refers to placing of papers before the Hon'ble competent authority. It is, however, clear that the matter was never placed on the judicial side of the Supreme Court. The decision in Citizens for Democracy through President v. State of Assam and others to which reference has been made by the Registrar General of Supreme Court is reported in (1995) 3 SCC 743 and in the matter of handcuffing of under trials and convicts for putting them under fetters, the Supreme Court held that handcuffs and fetters are not to be placed on under trials and convicts as a matter of course as it is against human dignity. Such iron fetters or handcuffs can be imposed only under compelling circumstances and

with prior permission of the Magistrate or concerned court. The relevant directions in that case contained in paragraphs 16 to 22 are required to be reproduced herein as it is only the alleged violation of these directions that has resulted into initiation of contempt proceedings against the Constable and the concerned Police Authorities from the rank of Superintendent of Police and higher-ups in this case:-

"16. We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or under trial while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

17. Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

18. In all the cases where a person arrested by police, is produced before the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

19. When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

20. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by us in para above, that it is necessary to handcuff such a person, he may do so

till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

21. We direct all ranks of police and the prison authorities to meticulously obey the above-mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law. The writ petition is allowed in the above terms. No. costs.

22. Copy of this judgment be sent to Government of India, Ministry of Home Affairs and to all the State and Union Territory Governments through Home Secretaries."

#. The Division Bench in its order of reference dated 11-12-2000 quoted the above reproduced directions of the Supreme Court in paragraphs 16 to 21 in the case of Citizens for Democracy (supra). It appears that in making the reference to the Larger Bench of Five Judges, the Division Bench was of the view that in accordance with directions contained in Paragraph 21 of the Judgment of the Supreme court (supra) violation of any directions of the Supreme Court are liable to be summarily punished under Contempt of Courts Act by the Supreme Court since it is a contempt of the Supreme Court and its directions. According to the Division Bench, the matter being one of contempt of the Supreme Court and its directions, High Court will have no jurisdiction in the matter and this being a question of general importance, the whole case should be decided by the Larger Bench. After constitution of the Larger Bench on 07-09-2001 a notice to show cause was issued to the contemners, namely, Samantbhai Lakhabhai Chudasama, the concerned Constable, Jayeshkumar Kantilal Bhatt and Director General of Police and Inspector General of Police, Gujarat. All the alleged contemners have filed their affidavits explaining the facts and giving explanation. They have also offered their unconditional apology. We shall deal with their defences separately at appropriate stage.

#. The first question that is required to be decided by this Larger bench is of the jurisdiction of this High Court to take cognizance of the alleged contempt for taking punitive action against the alleged contemners, if found to have committed contempt. The question is of general importance as it involves both the question of

fundamental rights under Article 21 and the contempt power of the Court. For the first time in the case of Sunil Batra v. Delhi Administration AIR 1978 SC 1675 the Supreme Court held:

> "Fetters, especially bar fetters, shall be shunned as violative of human dignity within and without prisons. The indiscriminate resort to handcuffs when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in a small category of cases. Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture.
>
> 4. Where an under trial has a credible tendency for violence and escape a humanely graduated degree of 'Iron' restraint is permissible if only if-other disciplinary alternatives are unworkable. The burden of proof of the ground is on the custodian. And if he fails, he will be liable in law. ...
>
> 5. xxx xxx
>
> 6. The discretion to impose 'irons' is subject to quasi-judicial oversight, even if purportedly imposed for reasons of security."

#. One more important decision of the Supreme Court in the light of defence taken by the contemner constable in this case deserves to be specially taken note of for considering the charge of contempt. In the next case of Prem Shankar v. Delhi Administration AIR 1980 SC 1535 on handcuffing which is held to be violation of human rights of under trials and convicts as part of fundamental right of liberty under Article 21 of the Constitution of India, the Supreme Court laid down the law on handcuffing as under:-

> "We clearly declare - and it shall be obeyed from the Inspector General of Police and Inspector General of Prisons to the escort constable and the jailwarder - that the rule regarding a person in transit between prison house and Court house is freedom from handcuffs and the exception, under conditions of judicial supervision we have indicated earlier, will be restraints with irons, to be justified before or after. We mandate the judicial officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other `irons' treatments and, if he has been, the

official concerned shall be asked to explain the action forthwith in the light of this judgment."

##. From the underlined portion of the observations of the Supreme Court what is to be noted is that handcuffing is not totally banned, but it is directed to be resorted to by the escort party of the under trial or convict only in case of extreme necessity for which there will be judicial supervision and scrutiny. It is clear from the observations quoted and underlined above that where handcuffs are used against an under trial or convict the trying judge or the Magistrate has to interrogate the prisoner and the officials and if necessary ask them to explain their conduct. The officers and escort party can explain their conduct before or after the use of handcuffs.

##. In the case of Sunil Gupta vs. State of Madhya Pradesh (1990) 3 SCC 119, following its earlier decision, the Supreme Court made observations and directed as under:

"On judicial order by a competent Court, that person comes within the judicial custody of the Court. Therefore, taking of a person from a prison to the court or back from Court to the prison by the escort party is only under judicial orders of the Court. Therefore, even if extreme circumstances necessitate the escort party to bind the prisoners in fetters, the escort party should record the reasons for doing so in writing and approve or disapprove the action of the escort party and issue necessary directions."

##. In Khedut Majdoor Chetana Sangath v. State of Madhya Pradesh and others AIR 1995 SC 31, the Supreme Court referring to its earlier pronouncements in the case of Prem Shankar Shukla (supra) and Sunil Gupta (supra) again expressed serious concern on the practice of police party in a routine manner of putting fetters or iron bars on the under trials and convicts and thus brazenly violate their fundamental human rights. The Supreme Court reiterated and condemned such action in the following words:

"These two pronouncements constitute the law of the land. The plea of ignorance of the law only is stated to be rejected. What is worse in this case is the Magistrate behaving in this way. We are of the view that Magistracy requires to be sensitised to the values of human dignity and to

> the restraint on power. When it allows an inhuman conduct on the part of the police, it exhibits both the indifference and insensitiveness to human dignity and the constitutional rights of the citizens. There could be no worse lapse on the part of the judiciary which is the sentinel of these great liberties."

##. It is in the light of the above mentioned declarations of law and directions made by the Supreme Court on use of fetters and irons on the under trials and convicts that in the case of Citizens for Democracy (supra) (1995) 3 SCC 743 the directions which we have quoted in the earlier part of our judgment came to be issued with a further declaration as under:

> "We make it clear that the law laid down by this Court in the abovesaid two judgments and the directions issued by us are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Courts Act apart from other penal consequences under law. ..."

##. A survey of the above decisions of the Supreme Court clearly shows that Supreme Court noticed that despite a clear law laid down and declaration made by the Supreme Court regarding handcuffing, the police authorities continue to violate and defy the law. It is under these circumstances that the Supreme Court adopted a stern attitude and directed that handcuffing in violation of the law laid down by the Supreme Court will constitute contempt and can be summarily dealt with as contempt for punishing the offender.

##. The question argued before us at length for several days by the counsel appearing is whether disregard of the declarations of law and breach of the directions made by the Supreme Court would be punishable as contempt only by the Supreme Court or this High Court can also take cognizance of the same as the contempt is committed within its jurisdiction. It is clear that on the directions of the Supreme Court violation of the directions in the matter of handcuffing are to be dealt with "summarily under the Contempt of Courts Act".

##. The Contempt of Courts Act, defines `civil' and `criminal' contempt. The definition of `criminal contempt' in Section 2(c)(iii) includes "any act which interferes, or tends to interfere with, or obstructs or

tends to obstruct, the administration of justice in any other manner". An act of the police and the concerned authorities or the police which tend to interfere with the administration of justice or which amount to lowering down the authority of the Court is well covered within the definition of `criminal contempt' in Section 2(c)(iii). The acts complained of thus constitute `criminal contempt' under Section 2(c)(iii) as it has tendency to interfere and obstruct the administration of justice and it is also a `civil contempt' in the sense it disobeys the judgment and directions made by the Supreme Court.

##. In the instant case, as has been reported by the learned trial Judge, there has been repeated breaches of the directions of the Supreme Court in the matter of handcuffing the under trials during their transit from jail to court. These acts are not merely contempt of Supreme Court or of the trial court. They are contemptuous acts against the `court' as such in its generic sense. High Court as constitutional court under Article 215 of the Constitution is a court of record and has inherent right as such to punish for contempt of itself. It derives power to punish contempts of subordinate courts under Section 10 and 15(2) of the Contempt of Courts Act. The present case is both of criminal and civil contempt. Supreme Court undoubtedly has jurisdiction to deal with the matter, but since, the acts complained of amount to contempt of trial court, which was not approached for permission before putting fetters, it is a criminal contempt in the sense that authority of the court as such has been looked down upon or tried to be disregarded. The High Court certainly has power under subsection (2) of Section 15, on a report of criminal contempt by subordinate court to take cognizance of the contempt and punish the offender if the contempt is held to have been proved. We are not prepared to accept the arguments advanced on behalf of the contemners that the alleged contempt of handcuffing the under trial in transit from jail to court is not a contempt of the subordinate court as it was not committed in court and if at all proved it may be held to be mere breach of the directions of the Supreme Court which alone can take cognizance. As we have held above, the alleged act can be seen as an affront to the judicial system as a whole and the law declared by the Supreme Court. It is an act on behalf of the police authority with an attitude "we do not care". It is this cavalier fashion and contemptuous attitude of not obeying the law with regard to judicial administration that the act has to be viewed as a contempt of court in general, that is of the judicial

system as such. It is definitely a contempt of court of the trial court as in the course of bringing an under trial in judicial custody the permission of the trial court was not obtained. It is not merely a violation of law laid down by the Supreme Court but an act of open defiance of the authority of the court and the rule of law. Such criminal contempt of the subordinate court can be dealt with by the High Court on the report of the former in accordance with Section 15(2) of the Contempt of Courts Act. This court should not, therefore, feel inhibited by the fact that the matter has not been sent to back to this Court by any order on the judicial side of the Supreme Court and it is only on administrative side that the Registrar General of Supreme Court has sent back the papers to us. In our opinion, the perception of law of the learned trial judge in treating the contempt to be one of Supreme Court is also not decisive when we have taken a view that the acts complained of by the police party and the police administration of Bhavnagar of the State, are acts of defiance of the rule of law and judicial administration. The contempt power is given to this Court by the Constitution under Article 215 and by the statute. The purpose is maintaining dignity and authority of the Court, unity and integrity of the administration of justice and to preserve people's faith in the system of administration of justice. The other constitutional objective is to maintain and preserve the rule of law by upholding and protecting the majesty of the Court. Any action intended to erode the faith of the people in the judicial administration should be viewed as contempt with power to the Court to take all necessary steps to protect the purity and ensure adherence of the judicial system. Whenever the contempt jurisdiction is exercised, it is not for the purpose of protecting or defending a particular Judge or Magistrate. The purpose is to defend, protect and preserve the independent authority of the court. An act may amount to a contempt of a particular court. The same act may also amount to contempt of the court as an institution. Looked at from both the angles, it is the High Court which is fully empowered to deal with the same. The following observations of Lord Diplock in the case of A-G. Vs. Leveller Magazine Ltd. (1979) 1 All ER 745 are very pertinent to guide us on the subject of our jurisdiction:

> "It may be that a "ruling" by the court as to the conduct of proceedings can have binding effect as such within the courtroom only, so that breach of it is not ipso facto a contempt of court unless it is committed there. Nevertheless where (1) the reason for a ruling which involves departing

in some measure from the general principle of open justice within the courtroom is that the departure is necessary in the interests of the due administration of justice and (2) it would be apparent to anyone who is aware of the ruling that the result which the ruling is designed to achieve would be frustrated by a particular kind of act done outside the courtroom, the doing of such an act with the knowledge of the ruling and of its purpose may constitute a contempt of court, not because it is a breach of the ruling but because it interferes with the due administration of justice."

##. In this context, on the acts of police resorting to indiscriminate arrest, in the case of D.K. Basu vs. State of West Bengal reported in AIR 1997 SC 610, the Supreme Court very clearly held as under by recognising and the authority of the High Court to deal with such contempts:-

"Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt may be initiated in any High Court of the country having territorial jurisdiction over the matter."

##. It is true that in directions contained in paragraph 21 of the Citizens for Democracy case (supra), the Supreme Court has not in so many words recognised the jurisdiction of the High Court and entrusted it the duty to deal with the contempts in the matter of indiscriminate handcuffing as in the case of indiscriminate arrest, but for that reason alone it cannot be held that the Supreme Court never intended that the High Court's inherent power to deal with the contempts of itself as an institution and contempt of subordinate court should not be exercised whenever a violation of the directions of the Supreme Court are noticed. From the various orders of the Supreme Court and the spirit and intention behind its direction in paragraph 21 in the cases of Citizens for Democracy (supra) and D.K. Basu (supra), we are clearly of the opinion that the Supreme Court desired that deliberate infraction or violation of the directions of the Supreme Court by indiscriminate handcuffing should be dealt with as contempts and summarily punished by all competent courts in India.

##. From the last few lines of directions contained in paragraph 21 in Citizens for Democracy case (supra), it would not be reasonable to infer that the Supreme Court intended that hundreds of cases of violation of the various directions of the Supreme Court by the police in any part of the country should be brought to the notice of Supreme Court alone. Such intention practically and theoretically is impossible of observance. If the Supreme Court alone is to be approached for every violation of its directions, it would be well-neigh impossible for every aggrieved party to approach the Apex Court. It would also be impossible for the Supreme Court to deal with all such thousands of cases of breaches. It is, therefore, reasonable to infer from the directions in Citizens for Democracy case (supra) that the Supreme Court intended to leave it to the concerned courts to deal with such breaches at their level under the provisions of Contempt of Courts Act and summarily punish the guilty.

##. As a result of the discussion aforesaid, our answer to the question of jurisdiction referred to us by the Division Bench is that this Court as constitutional court under Article 215 can take cognizance of the alleged contempt and the repeated acts of such contemptuous conduct of the police administration at Bhavnagar as contempt of the judicial institution as such. Our conclusion also is that undoubtedly it is a criminal contempt of subordinate court as the act has tendency to obstruct and interfere in the administration of justice by using handcuffs in a routine manner and thus flagrantly violating the rule of law. This Court is, therefore, competent to deal with the criminal contempt of subordinate court on a reference made under Section 15(2) of the Contempt of Courts Act may be that the reference has been made by the trial Judge not directly to us, but has been received through the Supreme Court on administrative side.

##. We do not consider it necessary to deal with a large number of other rulings cited before us by the counsel for the parties to point out that similar complaints and allegations of complaints were directly entertained and dealt with by the Supreme Court in its contempt jurisdiction. That fact according to us, is wholly irrelevant, because Supreme Court, in any case, has the jurisdiction to deal with such contempts.

##. The next point required to be considered is of

limitation under the Contempt of Courts Act. Such a plea was not initially taken by the contemners, but learned counsel appearing for them took such a plea in the course of arguments.

##. The plea of limitation taken on behalf of the contemners need not detain us any longer in view of the authoritative pronouncement of the Supreme Court in the case of Pallav Sheth v. Custodian and others reported in 2001 AIR SCW 3025. Section 20 of the Contempt of Courts Act prescribes one year limitation for initiating contempt from the date the contempt is committed. The Section reads thus:-

"LIMITATION FOR ACTIONS FOR CONTEMPT. - No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

##. We have already mentioned the various relevant dates. In the present case, the alleged act of handcuffing the under trial was committed on 24-01-2000 and reference by the trial Judge was made to the Supreme Court on 11-02-2000. Notices in the contempt proceedings were, however, issued after the orders were made for constituting the Larger Bench. The notices were issued on 07-09-2001 to the contemners. The question is when the period of limitation began and when it expired. In the case of Pallav Seth (supra), the Supreme Court fully approved of the decision of the Full bench of Punjab and Haryana High Court in the case of Manjit Singh v. Darshan Singh 1984 Cri LJ 301. It quoted with approval the decision of the High Court as under:-

"Once that is so, one must now proceed to analyse and construe S. 20 independently. A plain reading thereof would indicate that the legislature drew a clear line of distinction between proceedings for contempt initiated by the Court on its own motion, and those not so done. Suo motu action by the High Court is thus clearly a class by itself. Consequently the statute in express terms refers to these two classes separately namely, any proceedings for contempt on court's own motion, and proceedings for contempt initiated "otherwise'. The use of the word "otherwise" is significant and indeed provides the clue to be the true interpretation of Section 20. Therefore, initiation of contempt

proceedings otherwise than on Court's own motion would include within its sweep a motion by the Advocate General, a reference by a subordinate Court to the High Court to take action for contempt and an application before the Advocate General seeking his consent by any other person under S. 15 and lastly in cases of civil contempt the motion by a private litigant directly in the Court.

"19. To finally conclude it must be held that the terminus a quo for limitation begins under Section 20 of the Act on the date on which the contempt is alleged to have been committed. The terminus ad quem in case of criminal contempt would be necessarily vary and be related to the modes of taking cognizance thereof provided for in S. 15. In cases where it is initiated on the Court's own motion it would necessarily be from the issuance of the notice for contempt by the Court. In case of a motion by the Advocate General under Section 15(1)(a), the proceedings would initiate from the date of the filing of such a motion in the High Court. Where any other person moves the Advocate General for his consent in writing as prescribed in S. 15(1)(b), the initiation of proceedings would be with effect from the date of such application. Lastly, in cases of criminal contempt of a subordinate Court on a reference made by it the proceedings must be deemed to be initiated from the date when such reference is made."

##. In the present case, in our opinion, the reference is made by the subordinate court to this Court although addressed to the Supreme Court on 11-02-2000, which is well within one year from the date of the alleged commission of contempt on 24-01-2000. As held by the Supreme Court by relying on the decision of Punjab and Haryana High Court (supra) that in cases of criminal contempt of a subordinate court on a reference made by it the proceedings must be deemed to be initiated from the date when such a reference is made.

##. We are not prepared to accept the contention advanced on behalf of the contemners that since the reference by the subordinate court was made to the Supreme Court, contempt proceedings suo motu were taken by the High Court only when after the constitution of Larger Bench a notice was issued to the contemners on 07-09-2001.

##. As held by the Supreme Court in the case of Pallav Sheth (supra), in cases of criminal contempt of subordinate courts, the initiation of proceedings on reference by subordinate courts should be within one year from the alleged date of contempt. In our opinion, therefore, the ground of limitation raised on behalf of the contemners cannot be accepted.

##. Lastly remains the question of the gravity of contempt and punishment. The Constable who handcuffed the under trial, at the first opportunity, in his explanation before the trial Judge admitted the fact that he had handcuffed the under trial during transit and he was aware of the legal directions issued by the Police Department on the decisions of the Supreme Court. His explanation given on 05-12-2000 is that looking to the nature of serious offence for which the accused was being tried and looking to his demeanour, conduct and the possibility of his escape he thought it necessary to handcuff him during transit from jail to the court. In his affidavit after issuance of notice by us, he reiterated the same fact and stated that although he was accompanied by one another police Constable Shri Arjanbhai, but keeping in view the fact of the aggressive personality of the accused and the seriousness of the offence for which he was being tried, he considered it proper and necessary to produce him in safe custody by handcuffing him.

##. On these facts, the question is whether the above named Constable can be held to be guilty of contempt of court. We have already noted and quoted the observations of the Supreme Court in the case of Prem Shankar Shukla (supra) 1980 SC 1535, wherein it has been clearly laid down by the Supreme Court as law that irons can be used against an under trial under conditions of judicial supervision and such restraints can be justified before or after. It is also directed by the Supreme Court to all the Magistrates and Judges to question the personnel and escort party with regard to the observance of rules of handcuffing. From the observations of law laid down by the Supreme Court in the case of Prem Shankar Shukla (supra), the requirement on behalf of the escort party is that it has not to make use of handcuffs in an indiscriminate and casual manner. It can use handcuffs if the necessity so demands for safe custody of the accused and with a view to not to allow him to escape from police custody. If the escort party resorts to handcuffing during transit, it has to justify its action before the concerned court. There is no complete restraint on the police escort party not to use handcuffs

in all circumstances. In the instant case, the Constable has given an explanation that although there were two Constable, but the accused was charged for a serious offence and his conduct and demeanour was such that they considered it proper to handcuff him during transit so that he might not escape. In these circumstances, it is not possible for us to hold that the Constable, namely, Samantbhai Lakhabhai Chudasama, deliberately intended to defy the orders of the Supreme Court or committed any contempt of the subordinate court before whom he produced the under trial.

##. The explanation offered by him appears to be plausible and acceptable. In the affidavits filed by the Director General of Police and Superintendent of Police, it is reported that there has been large number of cases of under trials escaping from the police custody and many times it becomes necessary to use handcuffs or fetters in the interest of administration of criminal justice system. It is, therefore, necessary that in each given case, when a complaint is made of putting fetters, the concerned court is required to apply its mind to the explanation offered and see whether such an explanation is justified or it is an excuse to avoid penal action. In the present case, we do not find that the explanation offered at the first available opportunity is either false or concocted.

##. For the aforesaid reasons, we find no ground to hold that the above named Constable, who is the alleged contemner before us, has committed any contempt which deserves to be punished.

##. Affidavits have also been filed by the then District Superintendent of Police, Bhavnagar and Director General of Police-cum-Inspector General of Police. Along with their affidavits they have annexed various Circulars which they have issued after the decision of Supreme Court instructing the police escort parties to observe the law laid down by the Supreme Court in use of handcuffs and iron fetters on the under trial prisoners and convicts. It is also stated that periodically, in training courses, the Police Constables and staff are educated in the criminal justice delivery system and they are apprised of their powers and duties as explained by the Supreme Court to protect the human and fundamental rights of citizens. We do not think that any further general directions, therefore, are required to be issued by us in this regard. We would, however, only say that it would be better if, to give full effect to directions of Supreme Court in various cases, necessary statutory

instructions and regulations be incorporated in the Police Manual, so that it becomes a statutory obligation of the police authorities to follow the various directions given by the Supreme Court.

##. Having held that the Constable abovenamed who was one of the escort party is not guilty of contempt, there is no question of imposition of punishment. For violation of service rules or instructions, in the affidavits of Senior Officers of the Police Department, it has been informed that after reference of the subordinate court, a departmental action was taken against the Constable and a minor penalty of withholding increment has already been imposed. As held by us above no case is made out for taking punitive action against any of the contemners. The Miscellaneous Criminal Application No. 6572 of 2000 is accordingly disposed of.

##. In the end, we must express gratitude to all the counsel appearing in this case. We had appointed Senior Advocate Shri Sharad B. Vakil as Amicus Curiae in the case and we are beholden to him that he, keeping his professional work aside, has devoted his full time in arguing the case at various stages at great length and has given us the valuable assistance and rulings for coming to a just conclusion. Mention also is required to be made of the very valuable assistance given by Shri Girish Patel, Senior Advocate by his Written Submissions which had been of immense help to us in deciding the reference. We had allowed him to submit Written Submissions, because intervention made by him by Miscellaneous Criminal Application No. 6831 of 2001 on behalf of the Centre for Social Justice (Janvikas) and Miscellaneous Criminal Application No. 6832 of 2001 on behalf of the Lok Adhikar Sangh, were opposed on behalf of the contemners, and rightly so, as it is not a public interest litigation and in contempt proceedings, we could not have allowed other parties to intervene and address the court on the question of contempt. We, therefore, reject the two Miscellaneous Criminal Applications Nos. 6831 and 6832 both of 2001 seeking intervention and for joining as party to the proceedings. We are, however, grateful to Shri Girish Patel, Senior Counsel, for assisting us by his Written Submissions. We also record with gratitude the very valuable assistance rendered by Shri S.N. Shelat, Advocate General assisted by Shri Kamal B. Trivedi, Additional Advocate General and Shri Arun D. Oza, Public Prosecutor, who addressed the Court in a most objective and dispassionate manner treating the case to be one of general judicial administration of the State. It is satisfying that Senior Counsel Shri Prakash

M. Thakkar and Shri R.J. Oza with Shri H.S. Tolia, who appeared for the contemners also adopted a very objective attitude in the case and placed the matter from all legal angles and with facts without any distortion. On behalf of the contemners, they took legal pleas and defences yet they have tendered unconditional apologies, which have been recorded in their affidavits. This shows their attitude of respect for the Court.

In the result, the contempt notices issued against the respondents are discharged.

(D.M.DHARMADHIKARI, C.J.)

(B.C.PATEL, J.)

(J.N.BHATT, J.)

(Y.B.BHATT, J.)

Per R.K. ABICHANDANI, J :

While respectfully agreeing with the decision reached in the erudite judgement of My Lord the Chief Justice holding that the Respondent No.4 Constable was not guilty of contempt and that no case was made out for taking punitive action against any of the alleged contemners and discharging the contempt notices issued against the respondents, I record my following reasons and conclusions on the important aspects of the matter.

2. Mr.R.P.Vaghela, the learned Joint District Judge & Additional Sessions Judge, Bhavnagar, by his letter dated 11th February 2000 addressed to the Registrar (Judicial) of the Supreme Court of India, reported to Hon'ble the Supreme Court that, in total disregard of the directions issued by Hon'ble the Supreme Court in Citizens for Democracy v. State of Assam reported in (1995) 3 SCC 743, one of the seven accused persons, Bharatkumar Amrutlal Maniar was brought handcuffed from the jail to the court without authorisation. It was further stated that the learned Judge had noticed that the practice of handcuffing undertrial accused persons without authorisation from Magistrates or Courts continues throughout the State of Gujarat despite specific directions of Hon'ble the Supreme Court. The learned Judge observed : "The constables ought not be blamed since they adopt this practice under instructions from their superior officers. It would, therefore, be necessary to take appropriate action against the higher

officers in the police and concerned departments of the Government of Gujarat". He requested the Registrar (Judicial), Supreme Court to put up his letter and report enclosed therewith "before the concerned Bench of Hon'ble the Supreme Court for taking appropriate action in this regard". He also suggested that, "the State of Gujarat, Director General of Police, District Superintendent of Police should be served notices in this regard". He opined in that letter: "In my humble opinion, the practice of handcuffing the undertrial accused person in the State of Gujarat amounts to contempt of Hon'ble the Supreme Court. I, therefore, request that appropriate action be taken in this regard".

2.1 The learned Additional Sessions Judge by his letter dated 11th February 2000 addressed to the Registrar of the High Court of Gujarat, requested him to forward the above letter together with his report to Hon'ble the Supreme Court, making it clear that the circular issued by the High Court of Gujarat dealing with the procedure to be followed in case of contempt of subordinate courts did not apply, since his letter and report which were addressed to Hon'ble the Supreme Court related to contempt of Hon'ble the Supreme Court. Therefore, the letter and the report of the learned Additional Sessions Judge were forwarded to the Registrar, Supreme Court by the letter dated 13th March 2000 of the Registry of the High Court on the footing that the directions of Hon'ble the Supreme Court in Citizens for Democracy case were flouted and this amounted to contempt of the Hon'ble the Supreme Court of India. The Registrar General, Supreme Court of India, by his letter dated 25th April 2000 in response to the letter of the learned Joint District Judge & Additional Sessions Judge dated 11th February 2000, wrote to the Registrar of the High Court as under :

> "The above matter was placed before the Hon'ble competent authority. I have been directed to inform you that in this respect the High Court being competent to take the action in this matter in view of the general directions of this Court in judgement dated 1st May 1995 passed in Writ Petition (Civil) No. 22 of 1995 entitled "Citizens for Democracy through its President versus The State of Assam & ors.", there was no need to forward the same to this Court".

2.2 The letter alongwith the annexures were thus returned for appropriate action to this High Court by the Registrar of the Supreme Court. Thereafter, it appears

that the learned Chief Justice directed on 7-11-2000 that the matter be placed before the appropriate Bench of this Court and the matter came to be registered as Suo motu petition No. 6572 of 2000 on 9-11-2000. When the matter came up on Board before the Division Bench assigned the contempt work on 4-12-2000, a notice was issued making it returnable on 11-12-2000. The Division Bench noticing that the learned Joint District Judge & Additional Sessions Judge had referred the matter to Hon'ble the Supreme Court pointing out breach of its directions and for taking appropriate action on the ground that there was contempt of Hon'ble the Supreme Court committed by virtue of such breach and further having regard to the fact that the matter was sent back by the Registrar of the Hon'ble the Supreme Court without any indication as to whether it was placed on the judicial side of the Supreme Court, observed that, "A question arises as to whether High Court can initiate contempt proceedings for breach of any directions given by the Hon'ble Supreme Court under the Contempt of Courts Act, 1971". The Registrar was therefore directed to place the matter before the Hon'ble the Chief Justice as the Division Bench was of the view that the above aspect required to be considered by a larger Bench, preferably of five judges. That is how the matter came to be placed before this Bench for deciding the suo motu contempt petition.

3. It will be seen that the suo motu contempt notice was issued by the High Court on the basis of the letter addressed by the learned Joint District Judge & Additional Sessions Judge to Hon'ble the Supreme Court for taking action for breach of its directions in Citizens for Democracy case which the Registrar of the Supreme Court sent back for consideration by the High Court and the alleged contemners were not put to notice in respect of any contempt other than that of the breach of directions of the Supreme Court issued in Citizens for Democracy case. Still however, the matter has been argued at length on the extended contention that there is also `criminal contempt' of the subordinate court committed by the police authorities by not taking permission of the trial Judge before handcuffing the undertrial prisoner for bringing him to the court from the jail and thereby, undermining its authority.

3.1 There can be no doubt that wilful breach of any direction given by Hon'ble the Supreme Court would amount to contempt of the Supreme Court, for which it alone can take appropriate action for its contempt. It is the prerogative of the Hon'ble the Supreme Court to consider whether there has been any willful breach committed, of

its directions and if so, what action it should take against the contemner. The constitutional declaration under Article 129 that the Supreme Court shall be a court of record expressly recognizes the power of the Supreme Court to punish for contempt of itself. Similarly, every High Court is a court of record with power to punish for contempt of itself under Article 215 of the Constitution of India. Part V of the Constitution makes provisions in respect of "The Union" which include "The Executive (Chapter I)", "Parliament (Chapter II)" and "Union Judiciary (Chapter IV)", while Part VI deals with "The States" and makes provisions in respect of "The Executive (Chapter "The High Courts in the States (Chapter V)" and "The Subordinate Courts (Chapter VI)". Thus, as per The Scheme of federalism adopted by the Constitution, separate provisions are made in it for the `Union Judiciary' and the `State High Courts' and its `Subordinate Courts' in the State. Control over the subordinate Courts vests in the High Court under Article 235 of the Constitution. The federal structure adopted in the Constitution of India forms the basis of the ambit of the powers of various Union and State organs so that each may function within the sphere allotted to it. Thus, when the constitutional provision of Article 129 recognizes the Supreme Court's power to punish for contempt of itself, High Court cannot encroach upon that power by resorting to Article 215 under which it has power to punish for contempt of itself. The independent powers allotted to these constitutional entities of the Union and the State are the hallmark of their high constitutional position and though the High Court is not made administratively subordinate to the Supreme Court in the same manner in which the State Executive or State Legislature are not made subordinate to their counterparts in the Centre i.e. the Union Executive or the Parliament in view of the federal nature of the Constitution, the High Court will have no power to take contempt action in respect of the breach, even if committed within its territorial limits, of directions of Hon'ble the Supreme Court which is the exclusive privilege of the Supreme Court under Article 129 of the Constitution of India. When the question of existence of constitutional power is in issue, its lack cannot be overcome by resort to any reasoning.

4. In paragraph 21 of Citizens for Democracy case (supra), the Hon'ble Supreme Court has directed all the ranks of police and prison authorities to meticulously obey the directions mentioned in the earlier paragraphs. It is observed that, "Any violation of any of the directions issued by us by any rank of police in the

country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law". (emphasis added). The Supreme Court obviously has exclusive power to initiate contempt proceedings for the breach of its directions contained in this judgement as are referred to in paragraph 21 and it would be presumptuous on the part of the High Court to initiate action under Article 215 of the Constitution or the Contempt of Courts Act, 1971 on the ground that the directions of the Supreme court have been violated in a given case. The final authority to decide whether there is breach of its directions in a given case will be the Supreme Court and if it holds that there is such breach, it alone can decide the nature and quantum of punishment. Any decision on ambit of power to initiate contempt proceedings will have a direct bearing in context of a variety of cases and circumstances in which the question for exercise of such power may arise and when the Constitution entrusts exclusive power to the Hon'ble the Supreme Court to punish for contempt of itself, the High Court should not venture to exercise such power on a spacious plea that there may otherwise be rise in the file of the Supreme court. No such justification will warrant exercise of contempt jurisdiction by the High Court in respect of the contempt of Hon'ble the Supreme Court committed by reason of breach of directions issued by it in its decision. There can also not be raised any question of delegation of such constitutional power of Hon'ble the Supreme Court from the fact that the letter of the learned Joint District Judge & Additional Sessions Judge was sent back to the High Court by the Registry of the Supreme Court. I, therefore, hold that the High Court cannot initiate contempt proceedings for breach of any directions given by Hon'ble the Supreme Court which may amount to contempt of the Supreme Court.

5. The matter does not, however, rest here in view of the contention that since the entire contempt proceedings are placed before the larger Bench for disposal and not just the above question, this Court ought to consider whether there was `criminal contempt' of the subordinate court by not taking its permission before putting handcuffs on the undertrial prisoner when he was brought from the jail to the court. It was argued that not taking such permission to handcuff the prisoner despite the directions of the Supreme Court constituted `criminal contempt' under section 2(c) of the Contempt of Courts Act, 1971, since such act undermined the authority of the subordinate court whose prior permission was required and therefore, the High Court has power to

punish for contempt of its subordinate court under section 10 of the Contempt of Courts Act. This argument is based on fallacious premise that a person cannot be handcuffed under any circumstance without the prior permission of the Magistrate or the Court before which the undertrial prisoner is brought. This argument, based on the decision of the Supreme Court in Citizens for Democracy case, overlooks the fact that the two Judge Bench of Hon'ble the Supreme Court, in the background of the facts of that case where the detenues were handcuffed and tied with a long rope to contain their movement while they were lodged inside the ward of the hospital, observed in paragraph 3 of the judgement that the law declared by the Supreme Court in Prem Shanker Shukla v. Delhi Administration (Bench Strength Three) reported in (1980)3 SCC 526, Sunil Batra v. Delhi Administration (Bench Strength Five) reported in (1978) 4 SCC 494, was a mandate under Articles 141 and 144 of the Constitution of India and all concerned are bound to obey the same. In paragraph 14 of the judgement, the Supreme Court observed:

> "This Court in Batra case and Shukla case elaborately dealt with the extreme situation when the police and jail authorities can resort to handcuffing of the prisoners inside and outside the jail. It is a pity that the authorities have miserably failed to follow the law laid down by this Court in the matter of handcuffing of prisoners. The directions given by this Court are not being followed and are being treated as a pious declaration. We take judicial notice of the fact that the police and the jail authorities are even now using handcuffs and other fetters indiscriminately and without any justification. It has, therefore, become necessary to give binding directions and enforce the same meticulously."

6. Thus, the directions contained in paragraphs 16 to 21 of the judgement in Citizens for Democracy case were issued by the Supreme Court to ensure that the directions given earlier by the two larger Bench decisions were followed. The Supreme Court in Citizens for Democracy case has, thus, not laid down anything inconsistent with the decisions in Batra case and Shukla case and the directions given by it are required to be read in light of the said earlier decisions in a way that does not conflict with those pronouncements of the larger Benches.

6.1 The Constitution Bench in Sunil Batra case negatived the challenge against the constitutionality of section 56 of the Prisons Act, 1894 which empowered the Jail Superintendent to put a prisoner in irons (which were `bar-fetters' in that case), when he considered it necessary with reference either to the state of the prison or the character of the prisoner and for the safe custody of the prisoner, holding that since the power under section 56 can be exercised only for reasons and considerations which are germane to the objective of the statute, namely, safe custody of the prisoner, which takes in consideration regarding the character and propensities of the prisoner, and, that these and the similar considerations bear a direct nexus of the safe custody of the prisoners as they are aimed primarily at preventing their escape, Section 56 in so far as it empowered the Superintendent to confine a prisoner in irons was not violative of Articles 14 or 21 of the Constitution and is not ultra vires (See paragraphs 236 and 237 of the Report). It was held that the power under section 56 is not unbridled because special precautions were to be taken for the safe custody of dangerous prisoners, irrespective of the fact whether they were awaiting trial or have been convicted. The Court held that :

> "It becomes clear that there are sufficient guidelines in section 56 which contains a number of safeguards against misuse of bar-fetters by the Superintendent. Such circumscribed peripheral discretion with duty to give reasons which are revisable by the higher authority cannot be described as arbitrary so as to be violative of Article 14". (See Para 238 ibid).

It was further held :

> "The legislative policy behind enacting section 56 is clear and discernible and the guidelines prescribed by the section have the effect of limiting the application of the provision to a particular category of persons. In such a situation, the discretion circumscribed by the requirement vested in the prison authority charged with the duty to manage the internal affairs of the prison for the selective application of section 56 would certainly not infringe Article 14". (See Para 240 ibid).

6.2 It may be noted here that, in the Jail Manual, it is provided in Rule 1290 that, "No prisoner (Undertrial

or convicted) shall be handcuffed by the police while being taken from jail to a court and vice versa or from one jail to another unless a definite direction has been given in writing by the court or the Senior Jailor directing that the prisoner be handcuffed". In Rule 1293, it is laid down that, "Handcuffs may be imposed, either separately or in addition to fetters, upon any male prisoner who is refractory, violent or dangerous". Rules 1291 and 1292 deal with the power of the Superintendent to place any convict, who has escaped or who is attempting to escape, in fetters. In Rule 1294 of the Jail Manual, it is provided that, "In cases of urgent necessity, the Senior Jailor may on his own authority impose fetters and handcuffs on a prisoner, reporting at once the fact in Register No.13". There are also restrictions against imposing fetters upon female prisoners, juvenile prisoners, civil prisoners or on any convict when appearing before the court under the Prisoners Act as mentioned in Rule 1289 of the Jail Manual. There is a special provision in Rule 1295 in respect of handcuffs that may be imposed upon any female who is violent or dangerous. It will, thus, be seen that there is no unguided power given under the Act or the Manual to the jail authorities to impose handcuffs or fetters.

6.3 In paragraph 354(1) of the Gujarat Police Manual, Volume I, dealing with behaviour of police officers towards undertrial prisoners, it is, inter alia, laid down that they are entitled to such reasonable consideration as is compatible with their safe custody and production before the Court. Their status and the probability of their attempting to escape should be taken into account before they are sent handcuffed through the streets. Station Officers and others who have to deal with such prisoners should use their discretion in such cases.

6.4 The word `fetter' as per the Webster's II New Riverside University Dictionary means, "a chain or shackle attached to ankles to restrain movement" and as per the Oxford Dictionary, it means, "a shackle for holding a prisoner by ankles". Section 56 of the Prisons Act, 1894 empowers the Superintendents to confine the prisoners in `irons' (i.e. handcuffs, chain or shackles), subject to safeguards against misuse of such powers as indicated in Sunil Batra case (supra).

6.5 When a prisoner is taken to or from any prison in which he may be lawfully confined, he shall be deemed to be in prison and shall be subject to all the same

incidents as if he were actually in prison as laid down in section 55 of the Prisons Act, 1894. Therefore, under section 55 read with section 56, the Superintendent is empowered to confine such prisoner in irons which would include handcuffs, but such discretion cannot be arbitrarily exercised and when exercised, must answer the directions of the Supreme Court in the Sunil Batra and Prem Shukla cases. The fact that the law recognizes putting a prisoner in irons when there is proper justification and it is legally permissible so to do, is evident from the provisions of section 45 of the Prisons Act 1894 which declares at item (7); "filing, cutting, altering or removing handcuffs, fetters or bars without due authority", to be "a prison offence". There is significant safeguard in section 58 of the Prisons Act 1894 which provides that no prisoner shall be put in irons or under mechanical restraint by the jailor of his own authority except in cases of urgent necessity in which case notice thereof shall be forthwith given to the Superintendent.

6.6 Under section 5 of the Prisoners (Attendance in Courts) Act, 1955 the officer in-charge of the prison shall cause the prisoner whose attendance is required by the court to be taken to that court so as to be present in the court at the time mentioned in such order and shall cause him to be detained in custody in or near the court until he has been examined or until the judge or presiding officer of the court authorises him to be taken back to the prison in which he was confined. Under section 3(2) of the Prisoners (Attendance in Courts) Act, 1955, any criminal court may, if a charge of an offence against a person confined in any prison is made or pending before it, make an order in the form set forth in the Second Schedule, directed to the officer in-charge of the prison. Under the said form, the officer in-charge is required to produce prisoner "under safe and sure conduct" and, after the court has dispensed with his further attendance, "cause him to be conveyed under safe and sure conduct back to the said prison". Thus, the officer in-charge ordered to produce is statutorily bound to ensure that the prisoner does not escape and is safely and surely brought to the court from the prison and taken back. Under section 9 of the Prisoners (Attendance in Courts) Act, 1955, the State Government is empowered to make rules, inter alia, for the escort of persons confined in a prison to and from courts in which their attendance is required and for their custody during the period of such attendance.

6.7 It will be noticed from section 49 of the Code of

Criminal Procedure, 1973 that a person arrested shall not be subjected to more restraint than is necessary to prevent his escape as laid down therein. In section 270 of the Criminal Procedure Code, it has been provided that, subject to the provisions of section 269 of the Code, the officer in-charge of the prison shall, upon delivery of an order made under sub-section (1) of section 267 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the court until he has been examined or until the court authorises him to be taken back to the prison in which he was confined or detained.

6.8 As per Rule 1289 of the Jail Manual, no fetters can be imposed upon any convict when appearing before a court and if in any exceptional case, a prisoner is so dangerous that it would be unsafe to produce him in the court without fetters, the police is required to make an application to the court requesting permission to produce the prisoner in fetters. However, no prisoner (undertrial or convicted) shall be handcuffed by the police while being taken from jail to a court and vice versa or from jail to another unless a definite direction has been given in writing by the court or the senior jailor directing that the prisoner be handcuffed, as provided by Rule 1290; and as per Rule 1293, handcuffs may be imposed, either separately or in addition to fetters, upon any male prisoner who is refractory (i.e. a person difficult to control), violent or dangerous. It will thus be seen that, just as the provisions of the Punjab Jail Manual considered in Sunil Batra case contained certain guidelines, even the Bombay Jail Manual which is applicable to Gujarat contains guidelines which prevent arbitrary exercise of powers to impose handcuffs or fetters.

7. In the background of the aforesaid statutory provisions and the Rules, we may again revert to the ratio of the decision of the constitution bench in Sunil Batra case. In that case, to the extent that it related to the provisions of section 56 of the Prisons Act, 1894, the facts were that the petitioner Sobraj who was in continuous detention was subjected to torturesome bar-fetters for 24 hours everyday of the month for nearly two years. In a petition under Article 32, he complained against the persistence of bar fetters notwithstanding the wounds on his heels and medical advice. The respondent State defended the imposition of bar fetters on him under section 56 of the Prisons Act, 1894. The

Supreme Court held that the bar fetters, to a very considerable extent, curtail, if not wholly deprive locomotion which is one of the facets of personal liberty. It also held that section 56 contains a number of safeguards against misuse of bar fetters by the Superintendent and hence, it cannot be described as arbitrary so as to be violative of Article 14. Justice Krishna Iyer in his separate judgement held that, section 56 is also valid, humanistically read by interpretation. Justice Krishna Iyer held that indiscriminate resort to handcuffs when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in a small category of cases indicated by His Lordship. It was held that where an undertrial has a credible tendency for violence and escape, a humanely graduated degree of `iron' restraint is permissible if and only if, other disciplinary alternatives are unworkable and the burden of proof of the ground is on the custodian. The discretion to impose irons is subject to quasi-judicial oversight, even if purportedly imposed for reasons of security. (See Para 197-B of the judgement).

8. The question of handcuffing of undertrial prisoners was considered in context of Articles 21, 14 and 19 by three-Judge Bench of the Supreme Court in Prem Shukla v. Delhi Administration (supra). Justice Krishna Iyer and Justice Chinnappa Reddy held that,

> "The minimal freedom of movement, which even a detainee is entitled to under Article 19 (See Sunil Batra), cannot be cut down cruelly by application of handcuffs or other hooks", (See Para 23 of the judgement).

> The Court held that to be consistent with Articles 14 and 19, handcuffs must be the last refuge as there are other ways for ensuring security. No prisoner shall be handcuffed or fettered routinely or merely for the convenience of the custodian or escort. "Functional compulsions of security must reach that dismal degree where no alternative will work except manacles" (See Para 26 ibid, emphasis added). There must be material, sufficiently stringent, to satisfy a reasonable mind that there is clear and present danger of escape of the prisoner who is being transported by breaking out of the police control and further that by adding to the escort party or other strategy, he cannot be kept under control (See Para 27 ibid). The onus of

proof in this regard is on him who puts the person under irons. It was further held that even where in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. The escort officer, whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the Presiding Judge and get his approval, (See Para 30 of the judgement).

It was also held that once the court directs that handcuffs shall be off, no escorting authority can overrule judicial direction. This is implicit in Article 21 which insists upon fairness, reasonableness and justice in the very procedure which authorises stringent deprivation of life and liberty. In the concurring judgement of Justice R.S.Pathak, it was held that if a police officer is vested with the power to restrain a person by handcuffing him or otherwise, there is a simultaneous restraint by the law on the police officer as to the exercise of that power and any arbitrary exercise thereof would infringe the fundamental rights of the person in custody and malicious use of the power can bring section 220 of the Indian Penal Code into play. It was further held that sections 46 and 49 of the Criminal Procedure Code define the parameters of the power envisaged by the Code in the matter of arrest, and, section 49 of the Code, in particular, foreshadows the central principle controlling the power to impose restraint on the person of prisoner while in continued custody (See Para 40 ibid). It was then held that,

"Consistent with the fundamental rights of such person, the restraint can be imposed, if at all, to a degree no greater than is necessary for preventing his escape. To prevent his escape is the object of imposing the restraint, and that object defines at once the bounds of that power".

"The rule, I think, should be that the authority responsible for the prisoner's custody, should consider the case of each prisoner individually and decide whether the prisoner is a person who having regard to his circumstances, general conduct, behaviour and character will attempt to escape or disturb the peace by becoming violent. That is the basic criterion, and all the provisions relating to the imposition of restraint must be guided by it" (See Para 41 of the judgement in Prem Shukla case). (emphasis

added)

8.1 In para 43 of the judgement in Prem Shukla case, the Court held :

"Now whether handcuffs or other restraint should be imposed on a prisoner is primarily a matter for the decision of the authority responsible for his custody". It is a judgement to be exercised with reference to each individual case". .... "The matter is one where the circumstances may change from one moment to another, and inevitably in some cases, it may fall to the decision of the escorting authority midway to decide on imposing a restraint on the prisoner". I do not think that any prior decision of an external authority can be reasonably imposed on the exercise of that power. One sector of supervisory jurisdiction could appropriately lie with the court trying the accused, and it would be desirable for the custodial authority to inform that court of the circumstances in which, and the justification for imposing a restraint on the body of the accused. It should be for the court concerned to work out the modalities of the procedure requisite for the purpose of enforcing such control". (emphasis added).

9. In Gurdeep Singh v. State (Delhi Administration) reported in (2000) 1 SCC 498, the Supreme Court observed in a case where the appellant was handcuffed while his confessional statement was recorded under the TADA and there was another policeman with the chain of handcuffs at some distance in the room and there were also armed guards outside the room :

"Keeping an accused under police custody in what manner with what precautions is a matter for the police administration to decide. It is for them to decide what essential measures are to be taken in a given case for the purpose of security. What security, in which manner are all in the realm of administrative exigencies and would depend on the class of accused, his antecedents and other information etc." (See Para 26 of the judgement).

10. The ratio of the decisions in Prem Shukla and Sunil Batra (supra) clearly negatives the contention that under no circumstance, handcuffs could be imposed. It is made clear that in extreme circumstances, handcuffs may

have to be put on the prisoner and the escorting authority must in that event record its reasons and show the reasons to the Judge when he is produced in the court and get his approval. The Court has shunned indiscriminate resort to handcuffs, but has observed in Sunil Batra case that the court has to strike a just balance between the dehumanizing prison atmosphere and the preservation of internal order and discipline, the maintenance of institutional security against escape, and the rehabilitation of the prisoners (See para 213).

10.1 The effect of the decisions of the Supreme Court in Sunil Batra and Prem Shukla case, to the extent that they recognize the permissibility of imposing handcuffs and the power of the concerned authority to do so in extreme circumstances cannot be taken away by a truncated reading of the decision of the Supreme Court in Citizens for Democracy case and the reading of that entire decision shows that the two-Judge Bench was at pains to ensure that the directions issued in those earlier cases were followed and in paragraph 14 of the judgement, it was even mentioned that the Supreme court in Batra case and Shukla case elaborately dealt with the extreme situation when the police and jail authorities can resort to handcuffing of the prisoners inside and outside the jail. Therefore, the direction contained in paragraph 21 of the judgement in Citizens for Democracy case requiring the authorities "to meticulously obey the above mentioned directions" and stating that any violation of any of the directions issued by the court by any rank of police in the country or any member in the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law, cannot be construed so as to mean that every case of handcuffing even if justified on the ratio of the decisions in Batra case and Shukla case should result in dealing with the officer concerned under the provisions of the Contempt of Courts Act. In other words, to the extent to which handcuffing is held to be permissible in certain extreme circumstances in Prem Shukla case and Batra case, there can arise no question of proceeding against the officer concerned on the ground that he has committed `criminal contempt' by not obtaining a prior permission of the Magistrate for the handcuffing of the person concerned.

10.2 From the ratio of the decisions of the Constitution Bench in Sunil Batra case and the three-Judge Bench in Prem Shukla case, it clearly follows that there may be extreme cases where the power to impose handcuffs can be exercised by the concerned authority and that the discretion to impose irons is conferred on the

Superintendent of Prison under section 56. This discretion can also be exercised within the bounds of the directions in Batra and Shukla cases even in relation to the undertrial prisoners who are brought to the court, in view of the provisions of section 55 of the Prisons Act. In cases of `credible tendency for violence and escape', such iron restraint is permissible if other alternatives are unworkable, but the escorting authority must record contemporaneously, reasons for doing so and whenever he handcuffs a prisoner produced in court must show the reasons so recorded to the presiding judge and get his approval as directed by the Supreme Court. The handcuffs cannot be imposed arbitrarily or at the whim or caprice of the escort. The authority should consider the case of each prisoner individually and decide whether the prisoner is a person who having regard to the circumstances, general conduct, behaviour and character will attempt to escape or disturb peace by becoming violent. Whether handcuffs or other restraint should be imposed on a prisoner is primarily a matter for the decision of the authority responsible for his custody, as held by Justice Pathak in Prem Shukla case. There may be cases where the decision may have to be taken by the escorting authority midway on imposing a restraint on the prisoner who is being escorted, as held in Prem Shukla case. However, in such event, the court must be informed of the circumstances in which and the justification for imposing a restraint on the body of the accused. Therefore, there can be cases where there may not be time enough to obtain prior permission and such extreme circumstances may warrant handcuffing the prisoner and in such cases, it cannot be said that such authority has undermined the dignity of the trial Court whose permission could not be obtained earlier. In such cases, which are not cases of lowering or tending to lower the authority of the court by not getting prior permission for handcuffing, it cannot be said that the act of handcuffing of the prisoner to the extent that it is justified on the ratio of the Prem Shukla case and Sunil Batra case would amount to `criminal contempt' of the subordinate court so as to warrant initiation of the proceedings under section 10 of the Contempt of Courts Act, 1971. However, any handcuffing which is not warranted on the ratio of the aforesaid decisions would create such liability on the part of the authority imposing handcuffs in wanton disregard of the requirement of obtaining prior permission of the magisterial court for imposing handcuffs on the prisoners to be brought to the court or taken back to the prison.

11. On the aspect whether there has been `criminal

contempt' of the subordinate court, it will be noted that, the armed police constable Samantbhai who was not arraigned as the alleged contemner was for the first time issued notice on 7-9-2001 by this Bench to face the charge of contempt, in his statement dated 5-12-2000 recorded by the Divisional Police Officer, Botad has stated that it appeared to him from the movements of Bharatkumar who was involved in the offence of murder that he would escape and it also appeared to him that the accused was violent and with a view to see that he does not escape, he had imposed handcuffs on him from the gate of the jail till the court compound where he had removed the handcuffs. So far constable Samantbhai is concerned, since the contempt notice was for the first time issued to him on 7-9-2001, initiation of proceedings in respect of the incident that took place on 30-7-1998 assuming that the question involved `criminal contempt' of the Subordinate Court was clearly hit by the provisions of section 20 of the Contempt of Courts Act. However, Samantbhai in his affidavit filed before this Court has tendered an unconditional apology for the incident. The respondent Jayeshkumar, Superintendent of Police, Bhavnagar in his affidavit in response to the notice served in the present application has also tendered his unconditional apology for the incident. He has stated in his affidavit that the circular in relation to observance and guiding principles in the matter of handcuffing, issued in consonance with the directions contained in the decision of the Supreme Court by the State Government on 29-12-1999, was circulated to all police stations and police officers. The proforma of the application to be made seeking permission of Magistrate in case of necessity has also been circulated. The respondent No.1 Samantbhai was imposed penalty of stoppage of one increment for a period of one year for the lapse. It is further stated that the circular was being readover daily to all police officials taking roll-call for a period of eight days from the date of receipt. It would be better if, besides merely chanting the circular for eight days in a row, the concerned officers understand its contents so that the requirement of permission of the magisterial court in context of handcuffing undertrial prisoner is complied with. The facts on record do not establish that any of the alleged contemners committed `criminal contempt' by undermining the authority of the Subordinate Court in this case.

12. For the reasons given hereinabove, this Court will have no jurisdiction to initiate contempt proceedings on the ground that there has been a breach of directions given by Hon'ble the Supreme Court and the

Supreme Court alone can initiate such proceedings in exercise of its contempt jurisdiction. Furthermore, on the extended question which has been argued namely, that there has been `criminal contempt' of the Subordinate Court by undermining its authority by not seeking its permission and therefore, this court should initiate proceedings under section 10 for contempt of the subordinate court on that count, it is held that so far as the respondent No.4 Constable is concerned, the initiation of the proceedings against him by a notice which was issued on him for the first time on 7-9-2001 is clearly barred by the provisions of section 20 of the said Act. In any event, he seems to have acted under a bonafide belief that the accused was violent and was likely to escape. He has therefore not committed any contempt of the Subordinate Court by not seeking its prior permission. As regards the other respondents, having regard to what they have stated in their affidavits in reply, it is held that they have not committed any `criminal contempt' of the subordinate court and there is no warrant for taking any action under section 10 of the said Act against them on that count.

The contempt proceedings against the respondents are, therefore, hereby dropped and the contempt notices issued against the respondents are discharged. The application stands disposed of accordingly.

[R.K.ABICHANDANI, J.]

[sndevu/parmar]